

Court of Appeals, State of Michigan

ORDER

Shirley Tate v Jon Glen Barber, D.O.

Docket No. 271539

LC No. 06-608397-NI

Brian K. Zahra
Presiding Judge

Michael J. Talbot

Kurtis T. Wilder
Judges

In lieu of granting leave to appeal, pursuant to MCR 7.205(D)(2), the Court orders that the June 14, 2006 order of the Wayne County Circuit Court is REVERSED. The circuit court erred in finding that the affidavit of merit was timely. That plaintiff had obtained the affidavit of merit addressing Dr. Barber before she filed the complaint in this case was immaterial. *Young v Sellers*, 254 Mich App 447, 451-453; 657 NW2d 555 (2002). Because plaintiff undisputedly failed to file the affidavit of merit concerning Dr. Barber with the complaint or otherwise within the applicable period of limitation, the circuit court should have granted Dr. Barber summary disposition pursuant to MCR 2.116(C)(7). *Young, supra* at 450-453. The equitable tolling doctrine does not save plaintiff's otherwise untimely filed affidavit of merit. *Ward v Rooney-Gandy*, 474 Mich 917, reversing 265 Mich App 515; 696 NW2d 64 (2005), for the reasons stated in Judge O'Connell's dissenting opinion. This case is REMANDED to the circuit court for further proceedings consistent with this order.

Pursuant to MCR 7.215(F)(2), this Court further directs that this order shall take immediate effect. The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 03 2007

Date

Sandra Schultz Mengel
Chief Clerk